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TELEGLOBE

September 17, 1998

VIA HAND DELIVERY

Ms. Donna Christianson
Telecommunications Division
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Room 836
Washington, D.C. 20554

Re: 1998 Biennial Regulatory Review-Reform of the International Settlements
Policy and Associated Filing Requirements, IB Docket No. 98-148
Regulation of International Accounting Rates, CC Docket No. 90-337

Dear Ms. Christianson:

Telelobe USA Inc. hereby submits on diskette copies of its Comments in the
above-captioned proceeding.

Sincerely,

Charles A. Tievsky
Assistant Vice President, Regulatory Affairs
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cc: ITS

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**Before the
Federal Communications Commission
Washington, D.C. 20554**

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In the Matter of)	
)	
1998 Biennial Regulatory Review –)	IB Docket No. 98-148
Reform of the International Settlements)	
Policy and Associated Filing Requirements)	
)	
Regulation of International Accounting)	CC Docket No. 90-337
Rates)	

COMMENTS OF TELEGLOBE USA INC.

Tele globe USA Inc. (Tele globe) applauds the Commission's decision to conduct a searching review of the proper function of International Settlements Policy (ISP) in a rapidly liberalizing global economy.

There is an urgent need to materially reform the ISP so as to match U.S. policy with market realities. Technology and policy developments worldwide have lead to rapid growth in the availability of alternative means by which carriers may originate and terminate U.S. traffic, with the FCC often taking a leading role in fostering these opportunities. Spurred in part by the World Trade Organization agreement on trade in basic telecommunications services and on the European Union's telecommunications directives, a wave of new competitive providers has been authorized to enter many key markets. Moreover, voice over internet protocol (VOI) and other technologies are permitting service providers to offer capabilities which traditional carriers may

use in order to duplicate some are all of the functions of the circuit switched network.¹ No carrier in any market is insulated from these forces.

Notwithstanding these developments, there may remain routes on which a single carrier is able to control pricing and to otherwise set unilaterally the terms of interconnection, possibly to the detriment of U.S. carriers and consumers. Teleglobe nevertheless is confident that any market power held by such carriers will continue to diminish and that the pace of favorable change will step up. Accordingly, the Commission's inquiry should not be whether to end regulation of international bilateral agreements, but how rapidly to phase-in change and whether there are circumstances in which the public interest will always require some level of oversight of bilateral relations. Teleglobe remains open-minded as to the particulars of ISP reform, and looks forward to assessing the record developing in this proceeding.

At this point, Teleglobe believes that, at minimum, the Commission should adopt its proposal to lift the ISP on routes where the foreign correspondent is a non-dominant carrier, and to apply the policy on all routes, regardless of WTO membership of the destination country. The Commission correctly notes that there is little danger that a foreign carrier without market power will have the ability to whipsaw U.S. carriers.² Moreover, freeing U.S. carriers and their correspondents from the burdens of the ISP and related filing requirements will lead to lower end user rates by permitting the parties to undercut the rates which incumbent carrier may seek to impose, thereby inducing the larger carriers to themselves lower rates. If the FCC continues to require U.S. carriers to obtain prior FCC approval for each new agreement, and to continue to

¹ Although there remain in many countries ambiguities in law and policy respecting VOI, it is unquestionable that interest is keen, the pace of development frenetic, and that large numbers of eager entrepreneurs are committed to implementing and expanding it.

² Notice of Proposed Rulemaking (NPRM), <http://www.fcc.gov/Bureaus/International/Notices/1998/fcc98190.pdf>, at para. 20.

whether another member itself offers access to U.S. carriers. The U.S.' willingness to open its market was achieved only after a critical mass of WTO members were willing to commit to market liberalization procompetitive regulatory policies. The Commission could reasonably conclude that countries which have demonstrated no commitment to the substance or process of the WTO treaties, and whose institutions may therefore enjoy substantial advantage over U.S. companies in their own domestic markets, should be subject to more restrictive FCC policies under Titles II and III of the Communications Act.

If a reciprocity policy is appropriate in a market entry analysis, however, it has no logical nexus to the ISP, whose purpose is to limit the ill effects of market power on U.S. carriers in their bilateral dealings with foreign correspondents. The Commission established the ISP to prevent foreign monopolists from taking undue advantage of the multi-carrier environment in the U.S. and to prevent undue discrimination to the detriment of U.S. carriers, which could lead to artificially inflated prices. On routes where there are already multiple carriers, competitive necessity will compel both correspondents to match the lowest available market rate.

There is no correlation between WTO membership and market power on a bilateral route, and a country that is a WTO Member may nevertheless maintain a monopoly market structure. Likewise, a country may not be a WTO Member yet foster some level of carrier competition. Russia, for example, is host to a number of developing carriers which are able to originate and terminate international traffic and which have network points of presence in European and other major hubs. U.S. consumers would be denied the benefits of negotiated agreements between U.S. and new Russian carriers if the Commission excludes Russia and similarly situated countries from coverage. This undermines the purpose of a settlements policy to begin with.

A more effective approach would be to remove the ISP with respect to non-dominant carriers on any route, thereby taking full advantage of competitive markets wherever they may be located.

Market Power Determination

The Commission has proposed adopting a presumption that a foreign correspondent does not possess market power if it controls less than 50% market share on a route in the relevant markets.⁶ This position is comparable to that applied to exemption from the “no special concessions” requirement. Telelobe supports adoption of the proposed 50% presumption, and removal of the ISP and related filing requirements under Sections 43.51 and 64.1001 of the Commission’s rules. In most cases, a carrier will have lost the ability to control prices at a market threshold much higher than 50%. In cases where market share may not be determinative of market power, U.S. carriers may petition the Commission for particular relief on a case-by-case basis in lieu of adoption of a broader rule which threatens to undermine the Commission’s pro-competitive objectives.

The Commission should also permit carriers to rely upon representations from their correspondents as to the extent of their relevant market share offshore, rather than requiring prior case-by-case determinations. A new pre-approval process of this breadth would create significant delays to implementation of new bilateral agreements. In addition to creating a significant new administrative burden on Commission staff, it would both delay the benefits stemming from the

⁶ NPRM at para. 22.

new agreements as well as inhibit the development of emerging U.S. and foreign carriers and the additional competition they bring to the market.⁷

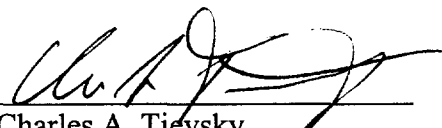
Moreover, as the Commission notes, a foreign carrier's market power on a route to the U.S. is readily apparent given that voice telephony competition is a relative novelty in most countries and that competing carriers are in the earliest stage of development. The Commission can therefore rely upon its complaint jurisdiction -- and the absence of U.S. carriers' reticence to invoke Commission process -- to address particular problem areas.

Conclusion

The Commission should, at minimum, remove the ISP and related filing requirements with respect to bilateral agreements in which the foreign correspondent does not possess market power.

Respectfully submitted,

TELEGLOBE USA INC.

By: 
Charles A. Tievsky

Its Attorney

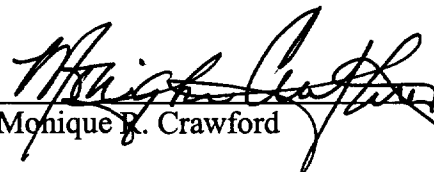
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⁷ A Commission undertaking to substantively assess a specific carrier's market position in a foreign market may also lead to concerns from foreign governments as to the extraterritorial application of U.S. law.

CERTIFICATE OF SERVICE

I, Monique R. Crawford, certify that I have this 17th day of September, 1998, caused the forgoing Comments of Telelobe USA Inc., to be hand-delivered, to the parties listed below.


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